



JOINT NATIONAL CALL TO ACTION

To reduce the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system

For release: Friday 15 April 2011

As community organisations and individuals committed to human rights and equal life opportunities for all Aboriginal and Torres Strait Islander peoples, we:

1. note that today marks 20 years since the Royal Commission into Aboriginal Deaths in Custody handed its final report to the Governor-General and express concern at the failure of Australian Governments to implement most of the report's recommendations;
2. recognise that genuine equality for Aboriginal and Torres Strait Islander people in Australia will not be achieved until the serious over-representation of Aboriginal and Torres Strait Islander people in our prisons, detention centres and criminal justice system is addressed;
3. commit to working together to bring about necessary changes in law, policy, funding, training and attitudes to rapidly reduce the imprisonment rates of Aboriginal and Torres Strait Islander people; and
4. call for cross-party support at federal, state and territory levels to targets, reforms, programs and funding which will reduce and subsequently eliminate the over-representation of Aboriginal and Torres Strait Islander people within the criminal justice system by:
 - agreeing to targets (including in the COAG Closing the Gap framework) to reduce and eliminate over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system;
 - committing sufficient upfront funding to evidence-based, place-based programs (including non-custodial diversionary options) in order to meet these targets, using a Justice Reinvestment framework; and
 - reforming law and policy to improve police accountability and standards in all places of detention through the introduction of independent investigations of police conduct (including deaths in custody) and independent inspections of all places of detentions, such as the model of National Preventative Mechanisms that are required to be established on ratification and implementation of the Optional Protocol to the Convention Against Torture.

BACKGROUND

The current situation

The Indigenous re-imprisonment rate (66 per cent within 10 years) is much higher than the retention rate for Indigenous students from year 7 to year 12 of high school (46.5 per cent) and higher than the university retention rate for Indigenous students (which is below 50 per cent). In other words, Indigenous people are returned to prison at a higher rate than they are retained in either high school or university.¹

The serious over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system has been widely known by governments for many years. Recent statistics indicate that the number of Indigenous people imprisoned in Australia comprises 26 per cent of the total prison population, with the Indigenous rate of imprisonment 14 times higher than the non-Indigenous rate.²

Statistical trends indicate that the problem has deteriorated over the last decade, with the imprisonment rate of Aboriginal and Torres Strait Islander Australians increasing by 34.5 percent between 2000 and 2008.³

The statistics relating to recidivism are just as concerning. For example, of the adult male Aboriginal prisoners who were released from prison between 1998 and 2008, approximately 70 per cent returned to prison.⁴

We recognise the need to implement the right of self-determination for Aboriginal peoples and communities, and the effectiveness of criminal justice programs developed and implemented by and/or in consultation with, the community.

The final report of the Royal Commission into Aboriginal Deaths in Custody 1991 stated that there are “disproportionate numbers of Aboriginal people in custody, compared with non-Aboriginal people”⁵ and that “too many Aboriginal people are in custody too often.”⁶ Despite an entire section and many of the report’s 339 recommendations being directed towards addressing this central problem, overall progress to eliminate this over-representation has been minimal.

WHAT IS NEEDED

1 Clear Targets within a National Plan to reduce imprisonment rates

Federal, state and territory governments have committed to health, education and employment targets as part of the COAG commitment to ‘Closing the Gap on Indigenous Disadvantage’.⁷ However, while high imprisonment rates impact directly on all of these targets, there is currently

¹ “Fear: Crime and Punishment”, Prof Chris Cunneen, *Dialogue*, Vol 29, No 2, 2010. The Academy of Social Sciences in Australia.

² ABS (2010a). Corrective Services, March 2010. Canberra: ABS: Catalogue No 4512.0: 23.

³ Australian Institute of Criminology, July 2009. <http://www.aic.gov.au/publications/current%20series/cfi/181-200/cfi195.aspx>.

⁴ P Papalia MLA, Shadow Corrective Services Minister, Justice Reinvestment: An option for Western Australia?, Brief, September 2010, p 20 .

⁵ Introductory paragraph, Chapter 5 – The Disproportionate Numbers in Custody. Report of the Royal Commission into Aboriginal Deaths in Custody, <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol1/124.html>

⁶ *ibid.* Para 1.3.3

⁷ See http://www.fahcsia.gov.au/sa/indigenous/pubs/general/Documents/closing_the_gap/foreward.htm

no target or national plan to reduce imprisonment of Aboriginal and Torres Strait Islander peoples.

The National Indigenous Law and Justice Framework adopted by the Standing Committee of Attorneys General (SCAG) does contain a goal to “reduce over-representation of Aboriginal and Torres Strait Islander offenders, defendants and victims in the criminal justice system”⁸. However, whilst SCAG agreed in 2009 to “develop ‘Justice *Closing the Gap* targets’ with the view to including such targets in future COAG reform packages”, no plan or targets have yet been developed or adopted.⁹

2 Justice Reinvestment: a new direction

Justice Reinvestment is gathering a growing and diverse range of supporters looking for a fresh approach which can break an entrenched cycle of failure. It is an evidence- and place-based, holistic approach to justice which can deliver reduced imprisonment, safer communities and reduced net public expenditure on prisons and crime related costs.

The Justice Reinvestment approach has been described as “calculating public expenditure on imprisonment in localities with a high concentration of offenders, and diverting a proportion of this expenditure back into those communities to fund initiatives that can have an impact on rates of offending.”¹⁰

Fourteen US states are currently exploring or implementing Justice Reinvestment approaches.¹¹ Within its Coalition Agreement, the new Conservative/Liberal Democrat Government in the United Kingdom committed to, “introduce a ‘rehabilitation revolution’ that will pay independent providers to reduce re-offending, paid for by the savings this new approach will generate within the criminal justice system.”¹² Its Justice Green Paper flagged the need for initial reinvestment grants, with anticipated corrections savings over time.¹³ The focus on reducing the use of custody and encouraging better use of prevention activities and alternatives to custody clearly reflects aspects of a Justice Reinvestment approach.

There are also a growing number of Australian reports urging Australian governments to adopt or at least explore a Justice Reinvestment approach, drawing on positive results from overseas. For example:

- a) The Australian Human Rights Commission’s Social Justice Report of 2009 recommended that “the Standing Committee of Attorneys General Working Party identify justice reinvestment as a priority issue under the National Indigenous Law and Justice Framework”, and “the Australian Social Inclusion Board, supported by the Social Inclusion Unit, add justice reinvestment as a key strategy in the social inclusion agenda”,

⁸ National Indigenous Law and Justice Framework 2009-2015, endorsed by the Standing Committee of Attorneys General, November 2009.

⁹ SCAG: Current Projects and Achievements. See

http://www.scag.gov.au/lawlink/scag/ll_scag.nsf/vwPrint1/scag_achievements#Indigenous%20Justice

¹⁰ “Building Communities not Prisons: Justice Reinvestment and Indigenous over-imprisonment”, Melanie Schwartz, Australian Indigenous Law Review, Vol 14 No 1, 2010.

¹¹ See <http://justicereinvestment.org/>.

¹² ‘The Coalition: Our program for Government’, accessed at:

http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition_programme_for_government.pdf on 1/4/2011.

¹³ UK Government, ‘Breaking the cycle: effective punishment, rehabilitation and sentencing of offenders’, December 2010.

- and “all state and territory governments consider justice reinvestment in tandem with their plans to build new prisons”.¹⁴
- b) The Final Report of the Senate Select Committee on Regional and Remote Indigenous Communities suggested that further work be undertaken on the “potential for justice reinvestment in regional and remote Indigenous communities”.¹⁵
 - c) The Senate Legal and Constitutional Affairs Reference Committee’s report on their inquiry into access to justice recommended that “the federal, state and territory governments recognise the potential benefits of justice reinvestment, and develop and fund a justice reinvestment pilot program for the criminal justice system.”¹⁶
 - d) A strategic review of New South Wales’ Juvenile Justice system explicitly recommended a Justice Reinvestment approach “because it provides the greatest long term return on investment through tangible benefits such as reduced crime, reduced re-offending and cost savings.”¹⁷
 - e) A report by the Community Development and Justice Standing Committee of the Western Australia Legislative Assembly recommended “that the government initiates a properly funded, evidence based, collaborative Justice Reinvestment strategy in one metropolitan and one regional ‘high stakes’ community identified by the recommended mapping exercise, as a pilot, to be evaluated against adequate performance measures.”¹⁸

With this growing support for a Justice Reinvestment framework in Australia, there is a need for Australian modeling of program design and economic impacts.

We recommend that the Australian Government immediately commit to investigating stage one of the Justice Reinvestment Framework, the identification of high risk communities, in cooperation with state and territory departments responsible for prisons and detention centres. Governments should then develop Justice Reinvestment pilots in several of those communities building on existing programs and creating new ones where necessary. All steps in this process should be conducted in consultation and partnership with affected communities.

3 Potential areas for investment, action and reform

We recognise that within a national approach of agreed targets and a Justice Reinvestment framework, the different jurisdictions and widely varying community circumstances will require differing priorities for action. However, this must be implemented as a part an holistic, coordinated approach which recognises that “the greatest leverage for reducing indigenous imprisonment rates appears to lie in reducing the rate at which indigenous persons appear in court rather than in reducing the rate at which convicted offenders are sentenced to imprisonment.”¹⁹ In this vein, we recommend:

¹⁴ Recommendation 2.2 2.3 and 2.4 Chapter 2, Social Justice Report 2009, Aboriginal and Torres Strait Islander Social Justice Commissioner, Australian Human Rights Commission.

¹⁵ Paragraph 2.54, Final Report of the Senate Select Committee on Regional and Remote Indigenous Communities, 24 September, 2010.

¹⁶ Recommendation 21 (para 6.56), “Access to Justice”, Senate Legal and Constitutional Affairs References Committee, 8 December 2009

¹⁷ Noetic Solutions, A Strategic Review of the New South Wales Juvenile Justice System, Report for the Minister for Juvenile Justice, April 2010. Accessible at http://www.djj.nsw.gov.au/strategic_review.htm

¹⁸ Recommendation 23, “Making our Prisons Work”, Community Development and Justice Standing Committee, Western Australia Legislative Assembly, Report No 6 in the 38th Parliament, 25 November 2010.

¹⁹ Joanne Baker, ‘The scope for reducing Indigenous imprisonment rates’, *Crime and Justice Bulletin* 55, March 2001, NSW Bureau of Crime Statistics and Research.

- i. **Programs for at risk individuals, groups or communities:**
 - o the development of new and expansion of existing successful diversionary and rehabilitative programs in at risk communities that address risk factors including homelessness, grief, trauma, mental health, alcohol and drug misuse, poverty and unemployment.
- ii. **Improved Police training and accountability:**
 - o that Police receive increased cultural competency training,
 - o that procedures and laws be reformed to remove powers which are inappropriate or disproportionately impact on Indigenous people,
 - o that the number of experienced officers deployed in remote communities be increased
 - o that minimum targets be established for numbers Aboriginal Police Liaison Officers, with broadened roles.
 - o that there is improved and independent accountability of police misconduct, and
 - o that the principle of arrest and incarceration as a sanction of last resort be strongly reasserted, with adequate mechanisms to ensure it is applied, with independent oversight to hold individuals to account when it is not.
- iii. **Adequate legal representation:**
 - o that Aboriginal and Torres Strait Islander people, especially women and those in remote locations receive adequate legal representation through the increased resourcing of Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Centres.
- iv. **Improved court processes and decisions:**
 - o that courts are properly resourced with skilled staff who receive ongoing cultural competency training,
 - o that there be access to translators for all Indigenous languages, and
 - o that laws are reformed to enable better recognition of cultural and social factors including improved sentencing guidelines, improved bail and non-custodial remand options and extension of involvement of Aboriginal and Torres Strait Islander Elders in court processes.
- v. **Improved prisons and detention centres:**
 - o that Australia ratify and implement the Optional Protocol to the Convention Against Torture to establish National Preventative Mechanisms in all places of detention, and
 - o that there be improved rehabilitative programs in areas including education, employment, mental health support (including overcoming grief and trauma), anger management and overcoming family and domestic violence.
- vi. **Better post-release transition and (re-)integration:**
 - o that there is increased support and assistance for through-care programs pre- and post-release, ensuring assistance is provided in areas including housing, education, employment, health and community re-engagement.

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This statement is endorsed by the following organisations (as at 15 April, 2011):

**Aboriginal Legal Rights Movement (ALRM)
Aboriginal Legal Service (WA)
Amnesty International Australia
Australian Lawyers for Human Rights
Australians for Native Title and Reconciliation (ANTaR)
Community Legal Centres NSW
Deaths in Custody Watch Committee WA
Flemington & Kensington Community Legal Centre
Human Rights Alliance
Human Rights Law Centre
Indigenous Policy and Dialogue Research Unit
Indigenous Social Justice Association
Jumbunna Indigenous House of Learning Research Unit
National Association for Community Legal Centres
(NACLC)
National Police Accountability Network of NACLC
National Welfare Rights Network
Northern Australian Aboriginal Justice Agency (NAAJA)
Public Interest Advocacy Centre (PIAC)**

For more information, see the ANTaR [incarceration campaign page](#) or contact:

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